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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,184

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EXAMINER

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/822,184	Applicant(s) HIGGINS, WILLIAM RAY	
	Examiner William V. Gilbert	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a first action following a request for continued examination. Claim 3 have been cancelled. Claims 1, 2 and 4-7 are pending and examined.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 November 2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (U.S. Patent No. 4,519,657) in view of Greene (U.S. Patent No. 6,284,336) and Phillips (U.S. Patent No. 3,375,620).

Claim 1: Jensen discloses a deformation resistant power pedestal assembly comprising a hollow rectangular post (Fig. 16) formed of a fiberglass reinforced resin (Col. 3, lines 55-65), the post has load bearing walls having exterior and interior surfaces, first and second open ends and a structural reinforcing cap (79, 80, 81) having a top rectangular surface (as see from above) and a length and width approximately equal in size to the first open end, the caps have side walls (Fig. 16, proximate 81) that extend perpendicularly from the top of the rectangular surface (as shown) the side walls engage the

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interior surface (it is frictional when any of the sides contact the interior surface of the post). While Jensen discloses several materials may be used to make the post, it does not disclose the material limitations as claimed. Greene discloses a post made of polyester cloth with fiberglass resin (Col. 3, lines 28-35) which meets the claimed limitation. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the post in Jensen in the manner of Greene because Jensen discloses the body is made of polyester or fiberglass resin, and the material in Greene would result in a functionally equivalent article. In addition, Jensen in view of Greene does not disclose that fasteners are used to connect the cap to the walls. Philips discloses a post system with an upper and lower section (Fig. 2) and fasteners (48 and 62) used to connect the pieces. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use fasteners as claimed in order to aid in securing the cap to the post in Jensen in view of Greene. Last, the prior art cited does not disclose the building code requirements. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the apparatus conform to the building code

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because testing standards are well known in the art so that one has an apparatus that operates in a proper manner.

Claim 2: the cap provides closure to the first open end (as shown).

Claim 4: a mounting surface extender (Jensen, Fig. 15: 56) having a first and second surface, the first surface is removable (see 56) and the second surface (the other side) is arranged to provide increased mounting area.

Claim 5: Jensen in view of Greene and Phillips discloses an additive to provide resistance of ultraviolet radiation (Greene, Col. 3: lines 30-34).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen in view of Greene and Phillips as applied to claim 1 above, and further in view of Fawley (U.S. Publication No. 2002/0095905).

Claim 6: Jensen in view of Greene and Phillips discloses the claimed invention except that the polyester resin is not an isophthalic polyester resin. Fawley discloses a shaft made of isophthalic polyester resin (paragraph 0034, lines 7-10). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use isophthalic polyester resin with the invention in Greene because the

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polyester used in Greene is inclusive of isophthalic polyester resin as disclosed in Fawley and would perform adequately as the resin. Further, it is well known in the art that isophthalic polyester resin typically has a higher tensile and compressive strengths versus non-isophthalic polyester resins. While the examiner agrees with the disclosure cited by the applicant in the Fawley reference regarding the percentage of glass by weight, the examiner respectfully notes that applicant claims the limitation as follows: from about 56.5% to about 61% glass by weight. The Fawley reference discloses a mix of about 70% (paragraph 0039). The examiner respectfully contends that the use of the limitation "about" provides flexibility and the Fawley reference can overlap the applicant's limitation. See MPEP 2173.05(b).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen in view of Greene and Jordan (U.S. Patent No. 6,422,783).

Claim 7: Jensen discloses a process by forming a pedestal assembly including a hollow rectangular post (Fig. 16) having load bearing walls (65) defining exterior and interior surfaces and first and second open ends (proximate 81 and 62 respectively), a reinforcing cap (79) constructed for insertion

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within the first open end (proximate 81), the cap engages the interior surface of the post to prevent movement of the exterior surface (any contact surface with the inside surface is a "frictional engagement"), and retention means (proximate 81) arranged for retaining the cap within the post, and attaching at least one appurtenant structure (Fig. 15: 56) via a through-bolt (as shown). While Jensen appears to disclose a single bolt securing the device, it does not disclose a plurality of bolts. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04. Further, Jensen discloses that the body (65) may be made of polyester or fiberglass resin (Col. 3, lines 57-63), but it does not disclose the body is polyester cloth veiled with fiberglass resin. Greene discloses a post made of polyester cloth with fiberglass resin (Col. 3, lines 28-35). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the post in Jensen in the manner of Greene because while Jensen discloses the body is made of polyester or fiberglass resin, a polyester cloth would aid in ease of production of manufacturing

the pedestal by aiding the maintaining of its shape and the fiberglass resin would be an obvious bonding agent for the cloth. Further Jensen does not disclose the load bearing limitation. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to design the post in Jensen to hold 18 times the weight of the assembly in order to function properly without failure, and the prior art of record is capable of being designed to meet these limitations. Lastly, Jensen does not disclose placing the pedestal in the ground, though Jensen does have a frangible base (Col. 2, lines 49-62). Jordan discloses a post (Fig. 1-A) with a frangible base (27, 37) that has an extension into the ground (25). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the frangible mechanism in Jordan with the post in Jensen in order to anchor the system better with the ground, and one of ordinary skill in the art would implant the pedestal in the ground at the depth range as claimed in order for the pedestal to remain upright. While the prior art cited discloses the use of concrete to anchor the system, concrete is not a necessary feature to anchor the post if one were to place it in the ground. While concrete is probably a preferred anchoring means, it is not necessary.

Response to Arguments

3. The following addresses applicant's remarks/arguments dated 14 November 2008:

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as applicant amended the claims.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./
Examiner, Art Unit 3635
/Basil Katcheves/
Primary Examiner, Art Unit 3635